

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CROSSFIT, INC., a Delaware
corporation,

Plaintiff,

v.

NATIONAL STRENGTH AND
CONDITIONING ASSOCIATION, a
Colorado corporation,

Defendant.

Case No.: 14cv1191 JLS (KSC)

**ORDER CONTINUING PRETRIAL
CONFERENCE AND ALL
RELATED DATES**

(ECF No. 153)

Presently before the Court is Plaintiff's *Ex Parte* Application to Postpone Pre-Trial Proceedings and Trial Date Due to Newly Discovered Discovery Misconduct ("Postponement Mot."). (ECF No. 153.) Although many of the pretrial deadlines are currently set within several weeks of the date on which Plaintiff filed its Postponement Motion, Plaintiff seeks to postpone the Final Pretrial Conference and related deadlines until the following dates:

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- 1 • Rule 26(a)(3) Disclosures: December 5, 2017;
- 2 • Memorandum of Contentions of Fact and Law: December 7, 2017;
- 3 • Meeting of Counsel: December 14, 2017;
- 4 • Proposed Pretrial Order: December 30, 2017;
- 5 • Final Pretrial Conference: January 4, 2018.

6 (Postponement Mot. 15.)

7 The Postponement Motion is based on “the grounds that, well after the completion
 8 of discovery in this matter and merely weeks before the first pre-trial filing deadlines,
 9 Defendant . . . produced hundreds of documents in a related action pending in California
 10 state court that—on their face—are directly responsive to discovery propounded in this
 11 action and thus should have been produced in the instant litigation.” (Notice of
 12 Postponement Mot. 1 (emphasis original).) “Based on the sample of previously withheld
 13 documents identified during numerous controlled searches, CrossFit has identified at least
 14 ten additional witnesses who CrossFit did not have a reason to depose” given Defendant’s
 15 discovery and disclosure failures. (Nahama Decl. ¶ 3, ECF No. 153-1.) “[A]mong the
 16 withheld documents” Plaintiff has thus far identified, “there are at least fifty that will be
 17 key trial exhibits in this case, but CrossFit has been deprived of the opportunity to explore
 18 these documents in discovery.” (Postponement Mot. 1 (emphasis original).)

19 Although Defendant has not submitted any documents to the Court regarding the
 20 Postponement Motion, CrossFit attached to its Motion a February 2, 2017 email from one
 21 of Defendant NSCA’s lead attorneys in this case stating that “[r]egarding the proposal for
 22 the continuance, the NSCA agrees these dates should be continued.” The NSCA continued,
 23 however, “that going into January 2018 for the Pre-Trial Conference is a long
 24 continuance[,]” and instead proposed “a 150 day continuance of the dates . . . [as] more
 25 appropriate.” (Nahama Decl. Ex O, ECF No. 153-2.) CrossFit disagrees: “Five months . . .
 26 is simply not sufficient time for CrossFit’s Sanctions Motion to be heard and, if terminating
 27 sanctions are not awarded, [for CrossFit to] complete discovery, file its dispositive motions

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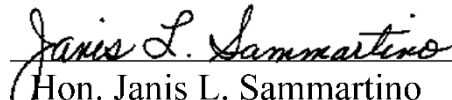
1 based on the newly discovered evidence, and adequately prepare for trial.” (Postponement
2 Mot. 14.)

3 Federal Rule of Civil Procedure 16(b)(4) provides that “[a] schedule may be
4 modified only for good cause and with the judge’s consent.” In the present case, the Court
5 is satisfied that there is good cause to modify the scheduling Order in line with CrossFit’s
6 request, *see, e.g., Wei v. Bodner*, 127 F.R.D. 91, 95–96 (D.N.J. 1989) (“The framework
7 provided for discovery by Fed. R. Civ. P. 26 evinces a broad policy favoring full disclosure
8 of facts before trial to aid the search for the truth.”), especially given the fact that CrossFit
9 has yet to fully discover the breadth of the alleged discovery abuses and their impacts on
10 its case. Accordingly, the Court **MODIFIES** the schedule as follows:

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- 12 • Rule 26(a)(3) Disclosures **SHALL BE DUE** by December 5, 2017;
- 13 • Memorandum of Contentions of Fact and Law **SHALL BE DUE** by December 7,
14 2017;
- 15 • Meeting of Counsel **SHALL OCCUR** on or before December 14, 2017;
- 16 • Proposed Pretrial Order **SHALL BE DUE** December 30, 2017;
- 17 • Final Pretrial Conference **SHALL OCCUR** on January 4, 2018 at 1:30 p.m.
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19 **IT IS SO ORDERED.**

20 Dated: February 9, 2017

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22 Hon. Janis L. Sammartino
23 United States District Judge
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